

C.C.R.B. CASE CLOSING FORM

Investigator assigned:		Team:	CCRB#:	<input checked="" type="checkbox"/> Force <input type="checkbox"/> Discourtesy	
Brendan Matz		1	9805481	<input type="checkbox"/> Abuse <input type="checkbox"/> O.L. <input type="checkbox"/> Injury	
Date of incident:	Time of incident:	Location of incident:		Pct. of occurrence:	Date S.O.L. Expires:
12/7/98	12:30 AM	§ 87(2)(b)		109	6/6/00
Date reported:	Time reported:	To whom/where/how reported:			
12/7/98	2:00 AM	To SGT Blauvelt at the 109th precinct in person			
Complainant:		Home address:			
§ 87(2)(b)		§ 87(2)(b)			
Victim(s):		Home address:			
1.) § 87(2)(b)		§ 87(2)(b)			
2.) § 87(2)(b)		§ 87(2)(b)			
Witness(es):		Home address:			
N/A					
Subject officer(s) (include rank):		Shield:	Tax:	Command:	
PO Christopher Stilianesis		15966	918367	Queens Auto Larceny Unit	
Witness officer(s) (include rank):		Shield:	Tax:	Command:	
1.) PO Gary Kurtz		25916	877952	109th Precinct	
2.) PO Neil Porter		10154	911139	109th Precinct	
3.) SGT James Blauvelt		876	898952	109th Precinct	
Allegation(s) by letter:				Recommendation(s):	
A.) Force: PO Christopher Stilianesis pointed his gun at § 87(2)(b)				A.) § 87(2)(g)	
B.) Force: PO Christopher Stilianesis pointed his gun at § 87(2)(b)				B.) § 87(2)(g)	

Synopsis

Off-duty PO Christopher Stilianesis was involved in a dispute with three intoxicated civilians-- § 87(2)(b)

and § 87(2)(b)

§ 87(2)(g)

Summary of Complaint

The complaint was made in person by § 87(2)(b) at the 109th precinct immediately following the incident (see Encl. 2a-b). Due to the fact that an off-duty police officer was involved, Queens North Duty Captain Robert Bonifati arrived at the precinct to interview all parties. § 87(2)(g)

In the "details" section of the NYPD Civilian Complaint Form, § 87(2)(b) states that on December 6, 1998, at approximately 11:45 PM, an off-duty police officer stopped his car in front of § 87(2)(b) in Queens, pulled out his gun, and aimed it at § 87(2)(b) friends, § 87(2)(b) and § 87(2)(b) (see Encl. 2a-b).

When interviewed at CCRB a month after the incident occurred, § 87(2)(b) provided some additional information (see Encl. 4a-c). § 87(2)(b), § 87(2)(b) in Queens, states that on the evening of December 6, 1998, he and his two friends, § 87(2)(b) and § 87(2)(b), went to a Korean restaurant on Union Street in Flushing. After dinner, at approximately 11:30 PM, the three friends took a cab to § 87(2)(b) house at § 87(2)(b). It was decided that § 87(2)(b) would give § 87(2)(b), who lives in the Bronx, a ride home in his car. § 87(2)(b) went into his house for approximately two minutes to retrieve the keys to his car, leaving his two friends outside to wait for him.

§ 87(2)(b) states that as he came out of his house with the keys, he saw a man pointing a gun at his two friends. § 87(2)(b) asked the individual why he was doing this, and the man responded that he thought they were trying to steal his girlfriend's car, which was parked in front of § 87(2)(b) house. § 87(2)(b) friends stood two feet away from the car when he left them and when he returned, and § 87(2)(b) never saw his friends touch the car. § 87(2)(b) then asked the individual to show him his permit to carry a firearm; the man refused and told him to call the police. § 87(2)(b) went back into his house and called 911.

§ 87(2)(b) states that the police arrived five to ten minutes later. At that point an unidentified officer informed § 87(2)(b) that the person who pointed the gun at his friends was an off-duty police officer. § 87(2)(b) his two friends, and the off-duty officer were transported to the 109th precinct. All parties were interviewed by a duty captain (later identified from police records as Capt. Robert Bonifati). § 87(2)(b) filled out an NYPD Civilian Complaint Form and received the name of the subject officer, PO Christopher Stilianesis of the Queens Auto Larceny Unit. § 87(2)(b) states that both of his friends do not speak English fluently. § 87(2)(b) and his two friends are native Korean speakers.

§ 87(2)(b) was interviewed at CCRB early in the morning on a Sunday (see Encl. 5a-b). Because § 87(2)(b) this was the only time that he could come in for an interview. § 87(2)(g)

Through a verified translator, § 87(2)(b) states that at the time and place of occurrence, he and § 87(2)(b) were waiting in front of § 87(2)(b) house. § 87(2)(b) went inside for approximately 30 seconds to get the keys to his car. During this 30-second span of time, § 87(2)(b) and § 87(2)(b) moved towards the curb directly in front of § 87(2)(b) apartment. According to § 87(2)(b), § 87(2)(b) sat down on the asphalt directly in front of a row of parked cars. § 87(2)(b) was standing near § 87(2)(b) and neither he nor § 87(2)(b) touched any of the cars that they were nearby, reached beneath them, or sat on their trunks.

Through a verified translator, § 87(2)(b) states that a red Jeep drove down 130th Street and stopped in the road in front of them. The driver exited his vehicle with his gun drawn and pointed it at § 87(2)(b) and § 87(2)(b). The individual did not say anything before drawing and pointing his weapon. However, he may have said something like, "Put your hands up," after he had his gun drawn and pointed. Neither § 87(2)(b) nor § 87(2)(b) threatened the individual or tried to hit him. § 87(2)(b) responded by saying, "What happened?" Neither § 87(2)(b) nor § 87(2)(b) put their hands in their pockets or pretended as if they had a weapon. § 87(2)(b) did not know that the individual was a police officer until officers from the 109th precinct arrived on the scene.

Numerous attempts were made to contact the second victim, § 87(2)(b) (see Encl. 19 & 23a-c). When the phone number provided on the NYPD Civilian Complaint Report was called, § 87(2)(b) daughter informed me that her father was away on business. A second call was made to the same number two weeks later. § 87(2)(b) daughter informed me that her father now resides in North Carolina and that she does not know how to reach him. Both § 87(2)(b) and § 87(2)(b) confirmed that § 87(2)(b) now resides somewhere in North Carolina, but they were also unable to provide a new mailing address and phone number. Both stated that they did not know how to reach him in North Carolina. An Internet search for § 87(2)(b) new phone number and/or address was also conducted with no positive results (see Encl. 22). Two additional calls were made to the number provided on the NYPD Civilian Complaint Report. An unidentified female's voice could be heard on the answering machine, but the two messages were not returned (see Encl. 19 & 23a-c).

§ 87(2)(b) was contacted later by phone. He states that neither he nor his friends had consumed any alcohol on the evening in question (see Encl. 23c).

Results of Investigation

Police Officer Accounts

PO Christopher Stilianesis provided the following information: on December 6, 1998, he had worked a 1000 by 1800 (10:00 AM to 6:00 PM) tour for the Queens Auto Larceny Unit (see Encl. 6a-b). At some time around midnight, he drove home from his fiancée's apartment in the Bronx to his house at § 87(2)(b). While driving down § 87(2)(b) past the house of the complainant, § 87(2)(b), he noticed three Asian males gathered around his girlfriend's mint condition '92 red Chevy Lumina. One of the individuals was laying beneath the car, one was sitting on the trunk, and one was kicking a tire. PO Stilianesis suspected the individuals of attempting to steal the car or to steal something off the car. PO Stilianesis had not had any prior contact with the individuals.

PO Stilianesis states that he pulled a U-turn, exited his vehicle, and asked the individuals what they were doing. At that point he noticed that the three Asian males did not appear to understand English very well: they spoke to him in "very broken English." The individuals were also, by his evaluation, extremely intoxicated: there was a strong smell of alcohol, their speech was slurred, and they were "stumbling about." The tallest member of the group of three immediately became belligerent and started to come at him. One of the other individuals was trying to swat him with the newspaper that he was holding in his hand. Then the two shorter individuals tried to hold back the taller individual. One of the shorter individuals then entered the house at § 87(2)(b) and came outside again immediately. The individual with the newspaper then reached into his pocket "like they do in the '50's movies when they have a gun"; PO Stilianesis states that he felt out-numbered and made the assumption that the individual was carrying a gun. PO Stilianesis then pulled out his gun, pointed it directly at the man who had his hand in his pocket, identified himself as a police officer, and told everyone to back up. At that point PO Stilianesis got back into his car and called 911 twice on his cellular phone.

PO Stilianesis states that the three individuals approached the car to say something to him, so he backed up and waited for the police to arrive. Two RMP's, three uniformed officers, and one sergeant from the 109th precinct responded. PO Stilianesis did not know any of these officers. He explained to the sergeant that he thought his fiancée's car was in danger of being stolen or tampered with and that he drew his weapon because he felt endangered. All of the parties involved were brought to the 109th precinct and interviewed by the duty captain.

PO Gary Kurtz, one of the officers from the 109th precinct who responded, states that when he and his partner, PO Neil Porter, arrived on the scene, three Asian males were yelling at a white male-- later identified as off-duty PO Stilianesis (see Encl. 8a-b). PO Kurtz spoke to one of the Asian males, who informed him that the white male had pulled his gun on them. The Asian male with whom PO Kurtz spoke communicated well in English. According to PO Kurtz, the three Asian males were very upset and intoxicated. He could smell alcohol on them, and they were very animated when they were trying to make their points. According to PO Kurtz, he was afraid that the three Asian males were going to become violent.

PO Neil Porter states that as PO Kurtz was speaking to the Asian males, he spoke with off-duty PO Stilianesis (see Encl. 10a-b). PO Stilianesis identified himself and told him that he thought the three Asian males were trying to steal something from his girlfriend's car. According to PO Porter, PO Stilianesis did not seem upset. In contrast, the three Asian males were highly agitated and intoxicated-- with slurred speech, blood-shot eyes, and an extreme smell of alcohol.

SGT James Blauvelt, the 109th precinct patrol supervisor on the evening in question, states that as soon as he arrived on the scene, he realized that there was a language barrier (see Encl. 12a-b). After speaking with the three civilians, he was unable to determine what had occurred. In addition, the three Asian civilians emitted an "extreme" smell of alcohol, were unsteady on their feet, and were agitated. PO Stilianesis told SGT Blauvelt that he had approached the three civilians to question them and that they turned and started to approach him. At that time he identified himself as a police officer and drew his weapon. PO Stilianesis then retreated to his car and called 911.

Police Documents

The UF-49, Unusual Occurrence Report, written up by Duty Capt. Robert Bonifati in connection with the incident, is consistent with the statements provided by the three officers who responded to the scene and is consistent with PO Stilianesis's statement (13a-c). The report also indicates that SGT Blauvelt inspected the automobile in question and did not discover any signs of an attempted forced entry or any other damage to the automobile.

Capt. Bonifati indicates that he spoke with § 87(2)(b) about the incident (see Encl. 13b). § 87(2)(b) told him that he and his two friends, § 87(2)(b) and § 87(2)(b), were on the block of his residence standing by some parked automobiles when a male approached them, displayed a firearm, and made no statement to them. Capt. Bonifati spoke with § 87(2)(b) as well (see Encl. 13b). § 87(2)(b) told him, in spite of a slight language barrier, that a male approached them, made some statements that he did not understand, and displayed a firearm. The report indicates that § 87(2)(b) was not interviewed due to a "severe language barrier." According to Capt. Bonifati's report, all three of the civilians had a strong odor of alcohol on their breath and appeared to be somewhat intoxicated.

The report indicates that Capt. Bonifati found PO Stilianesis to be fit for duty and in possession of his authorized off-duty revolver, a .38 caliber Smith and Wesson containing five authorized live rounds of ammunition. Capt. Bonifati determined that PO Stilianesis did not engage in any serious misconduct and recommended that the complaint be referred to the CCRB (see Encl. 13c).

The 109th precinct roll call for December 6, 1998 to December 7, 1998 identifies PO Kurtz and PO Porter as the officers assigned to sector M, the sector that covered § 87(2)(b) address (see Encl. 16a-i). SGT Blauvelt is identified as the patrol supervisor.

The 109th precinct command log for December 7, 1998 indicates that a CCRB complaint was taken from § 87(2)(b) at approximately 2:45 AM (see Encl. 17). The log indicates that § 87(2)(b) was "apparently intox." The 109th precinct stop and frisk log contains no reference to UF-250's, stop and frisk reports, filled out in connection with the incident (see Encl. 15).

911 Calls and Radio Run

The 911 tape and Sprint print-out indicate that three 911 calls were made in connection with this incident (see Encl. 14a-b & 911 tape). In the first call, which commences at 23:51:05 on December 6, 1998, PO Stilianesis can be heard saying, "Is he pulling something out of his pants?" He then addresses the 911 operator, identifies himself as an off-duty police officer, and requests that a patrol car be sent to the location. He states that he is having a problem with three "intox" Asian males. He states that they were sitting around his car, that he asked them to move, and that two of them wanted to fight him. Some indecipherable voices can be heard in the background.

In the second call, which commences at 23:58:58 on December 6, 1998, § 87(2)(b) states that some guy aimed a gun at him in front of his house and that the gun is unlicensed. § 87(2)(b) speech is not slurred, but he has a difficult time describing the incident to the 911 operator. § 87(2)(b) sounds calm and controlled.

In the third call, which commences at 23:59:01 on December 7, 1998, PO Stilianesis requests a patrol car again, stating that the police had not yet arrived. He identifies himself as an off-duty police officer again. PO Stilianesis states that three "intox" males are trying to have a dispute with him. When asked if there are any weapons involved, he states, "As of now, no." No voices can be heard in the background.

The radio run and the Sprint print-out indicate that sector M and the patrol sergeant responded to the scene in connection with these three 911 calls (see Encl. 14a-b & 911 tape). The call came over police radio as a dispute involving an off-duty police officer.

DMV Records

§ 87(2)(b) provided a plate number for the red Chevy Lumina parked out in front of his house-- the vehicle that PO Stilianesis identified as his fiancée's. Apparently § 87(2)(b) took down the wrong license plate number. According to DMV records, the number does not match a red Chevy Lumina (see Encl. 18).

Conclusions and Recommendations

Allegation A and B address § 87(2)(b) claim that off-duty PO Christopher Stilianesis used excessive force when he pointed his gun at § 87(2)(b) and § 87(2)(b).

A survey of OATH cases involving off-duty police officers drawing and/or pointing their weapons establishes the following patterns: 1.) Personal disputes are clearly separated from official police actions, with the former being judged more harshly, and 2.) The drawing and/or pointing of a weapon by an off-duty police officer must be reasonable in the circumstances. No departmental rules or guidelines exist to detail when it is proper for an officer to draw or point his weapon, so the officer is required to use a certain amount of judgment. § 87(2)(g)

In a recent case, *Police Department v. Gonzalez*, OATH Index No. 541/99 (Jan. 20, 1999), it was determined that a police officer wrongfully displayed his weapon following a personal dispute with another driver on a highway: The subject officer exposed his handgun to the complainant because he was angry that the complainant cut his car off when switching lanes. In *Police Department v. Williams*, OATH Index No. 1234/90 (Nov. 27, 1990), a similar conclusion was drawn in a case involving a tenant/landlord dispute: An off-duty officer exposed his weapon during an argument with his mother's landlord. In *Police Department v. Zahrey*, Oath Index No. 762/91 (June 13, 1999), it was found that an off-duty officer wrongfully pointed his weapon at a civilian following a personal dispute in the street: The subject officer pointed his gun at the complainant because he stepped out in front of the officer's car. In all three of these cases, the off-duty officers were not involved in legitimate police activities when they drew and/or pointed their guns. Furthermore, the action taken by the officers was determined to be unreasonable in the circumstances. The off-duty officers initiated the conflict, rather than responding to a real or perceived threat to their safety or the safety of others.

Off-duty PO Stilianesis states that he was engaged in a legitimate police activity when he approached the civilians. He claims that he approached them based upon the suspicion that they were attempting to steal or tamper with his fiancée's car. § 87(2)(b) admits that he was standing near a line of parked cars and that § 87(2)(b) was sitting down on the asphalt beside him. According to PO Stilianesis, the civilians were actually touching the car. § 87(2)(g)

[REDACTED]

According to PO Stilianesis, while engaged in this legitimate police activity, he immediately began to fear for his safety. He indicates that the three civilians were intoxicated and agitated. The three responding officers corroborate PO Stilianesis's account regarding the intoxication and agitation of the civilians. PO Kurtz even states that he was afraid that the civilians would become violent. Furthermore, both the 109th Precinct Command Log and the Unusual Occurrence Report indicate that the three civilians appeared to be intoxicated. When asked about his alcohol consumption in a follow-up telephone contact, § 87(2)(b) denied that he and his friends had been drinking.

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

§ 87(2)(b) states that he and § 87(2)(b) did not threaten or provoke the officer in any way; he claims that the officer approached in an aggressive and threatening manner. In his CCRB interview, PO Stilianesis states that prior to pointing his weapon, one of the civilians went into the house to call 911. During § 87(2)(b) 911 call, which commences at 23:58:58, he states that there is a "guy" outside pointing an "unlicensed" gun. § 87(2)(g)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

§ 87(2)(g)

Investigator: Brendan May Date: 10-6-99
Supervisor: C. Hughes Date: 10/4/99
Reviewed by: C. Hughes Date: 10/6/99
Reviewed by: _____ Date: _____